

Notice of Allowability

Application No.

10/625,418

Examiner

Annette R. Reimers

Applicant(s)

FOLEY ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 04/15/05.
2. ☒ The allowed claim(s) is/are 1-21.
3. ☒ The drawings filed on 23 July 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a method for preparing a spinal disc space, comprising inserting a body portion of a distractor into the spinal disc space with an upper surface of the body portion adjacent an endplate of an upper vertebra and a lower surface of the body portion adjacent an endplate of a lower vertebra, advancing a cutting instrument over the body portion to remove material between at least one of the upper and lower surfaces of the body portion and the adjacent vertebra and depositing cut material into a cavity formed in the body portion, the cavity opening toward at least one of the upper and lower surfaces, as set forth in claim 1.

Furthermore, no references, or reasonable combination thereof, could be found which disclose, or suggest a method for facilitating preparation of a disc space between adjacent vertebrae, comprising providing a distractor insertable into the disc space, the distractor including a body portion extending between a leading end and a trailing end, the distractor further including at least one flange extending from the leading end towards the trailing end of the body portion, the at least one flange forming a slot along the body portion and providing a cutting instrument advanceable over the body portion and into the slot formed between the body portion and the at least one flange of the distractor, as set forth in claim 10.

Also, no references, or reasonable combination thereof, could be found which disclose, or suggest a method for preparing a spinal disc space, comprising inserting a body portion of a distractor into the spinal disc space, advancing a cutting instrument over the body portion into the spinal disc space and limiting advancement of the cutting instrument into the spinal disc space by contacting the cutting instrument with a distal wall of the body portion, as set forth in claim 16.


The closest reference, Michelson (US Patent Number 5,484,437), fails to disclose a cutting instrument over the body portion to remove material between at least one of the upper and lower surfaces of the body portion and the adjacent vertebra and depositing cut material into a cavity formed in the body portion, the cavity opening toward at least one of the upper and lower surfaces, as set forth in claim 1. In addition, the Michelson reference fails to disclose the distractor including at least one flange extending from the leading end towards the trailing end of the body portion, the at least one flange forming a slot along the body portion and providing a cutting instrument advanceable over the body portion and into the slot formed between the body portion and the at least one flange of the distractor, as set forth in claim 10. Moreover, the Michelson reference fails to disclose limiting advancement of the cutting instrument into the spinal disc space by contacting the cutting instrument with a distal wall of the body portion, as set forth in claim 16.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

AR


KEVIN SHAVER
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